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Occupiers' liability: A duty to protect patrons from the criminal conduct of others

Crown Limited v Frank Norman Hudson [2002] VSCA 28, Supreme Court of Victoria, Court of Appeal, 26 March 2002

Australian Safeway Stores Pty Ltd v Zaluzna[1] established the principle that the occupier of a premises owes a general duty in negligence to take reasonable care to avoid acts or omissions involving a reasonably foreseeable risk of injury to lawful entrants. In *Crown v Hudson* the Victorian Court of Appeal[2] applied this duty in the context of one to take reasonable care to protect entrants from conduct, including criminal conduct, of third parties.

The existence of a duty of care in these circumstances is not new[3] nor was it disputed here[4]. However, in dismissing the appeal and holding that the inadequacy of Crown's system of security was such that it had failed to take reasonable steps to ensure the safety of its entrants, the case implies that the duty of occupiers to protect patrons from the conduct of others will be onerous, especially in circumstances where customers' conduct towards each other is fuelled by the consumption of alcohol.

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This decision will therefore provide a yardstick by which to measure the conduct required, not only of casinos, but of hotels, nightclubs and other similar entertainment venues.

The Facts

The respondent (Hudson), whilst in a gaming room of the appellant's (Crown's) casino, was attacked and criminally assaulted by an aggressive and partly intoxicated patron. During the unprovoked altercation, which lasted several minutes, the assailant jostled and goaded Hudson, encouraging him to 'have a go'. However, it was not until 18:26:40 hours that the abuse became excessively physical. Then the assailant began punching Hudson, causing a friend to intervene and pull the patron away whilst calling for security. However, once released, at 18:27:37, the assailant struck Hudson a final blow, damaging his teeth. Security assistance arrived at 18:27:51.[5]

Hudson alleged that Crown had breached the duty of care owed to him as a patron of the premises, in that reasonable care by Crown required a system of security that would have prevented the final assault by causing security staff to intervene before the blow to Hudson's mouth occurred.

THE DECISION

Breach

In the system of security adopted by Crown, dealers who became aware of disturbances on the casino floor did not activate the duress alarms fitted to their gaming tables, but instead notified their supervisor, who in turn gave a clapping signal to the floor's 'pit boss' to request assistance. The 'boss' would then alert the monitor room, which would communicate with those on the casino floor before directing security to the incident.

The court described this system as:

'...the genesis of bureaucratic inefficiency ... more directed to avoiding any confrontation on the floor than to protecting the customer.'[6]

The court concluded that in allowing too much time to pass from when the altercation became sufficiently nasty before intervening, Crown had breached its duty of care to Hudson by failing to provide an adequate alarm system. The court indicated that such an adequate system would have the following characteristics:

- regard would be given to the fact that, in the circumstances[7], disputes were likely to occur, especially where patrons have 'sufficient

opportunity to fuel their grievances from numerous bars"[8];

- a 30-second delay between security's notification of a dispute and their attendance[9]; and
- a security officer present in each room, and not merely roving the premises.[10]

Causation

The delay resulting from Crown's inadequate system caused Hudson's injuries. If security had been alerted no later than 18:26:50, given a 30-second delay, it was held unlikely that Hudson would have suffered the blow that injured him.[11] PL

Footnotes:

1 [1987] 162 CLR 479.

2 Ormiston and Batt JJA and O'Bryan AJA.

3 See for example: *Chordas v Bryant* [1989] 91 ALR 149.

4 Para 18.

5 Para 43.

6 At para 4, per Ormiston JA.

7 Here gambling.

8 At para 6, per Ormiston JA, and at para 11 per O'Bryan AJA.

9 At paras 45, 57 and 79, per O'Bryan AJA.

10 Although the trial judge considered this contributed to Crown's negligence and Ormiston JA indicated his agreement (para 4), Batt JA and O'Bryan AJA found it unnecessary to determine this issue on appeal (paras 9 and 49 – 51).

11 At para 79, per O'Bryan JA.